

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KARL WINGO,

Petitioner,

v.

Criminal Case No. 91-80936

Civil Case No. 04-71558

UNITED STATES OF AMERICA,

Honorable Patrick J. Duggan

Respondent.

ORDER DENYING CERTIFICATE OF APPEALABILITY

In 2004, Petitioner Karl Wingo (“Petitioner”) filed a Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. This Court denied Petitioner’s motion *in toto* on August 29, 2007. The Sixth Circuit Court of Appeals affirmed this Court’s decision on August 11, 2009. Petitioner thereafter filed in this Court a Motion for Return of Assessment of Fees on Vacated Counts of Conviction and a Motion to Vacate Order Denying 2255 Relief. In an opinion and order dated December 28, 2012, this Court granted in part and denied in part Defendant’s motion regarding the assessment of fees and denied his motion to vacate the order denying relief under 28 U.S.C. § 2255. Petitioner has appealed this Court’s decisions and thus needs a certificate of appealability from this Court to proceed. *See* 28 U.S.C. § 2253.

Section 2253 provides that a certificate of appealability may issue only if a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c)(2). As the Supreme Court has stated:

“ . . . the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court *could* resolve the issues [in a different manner]; or that the questions are adequate to deserve encouragement to proceed further.”

Barefoot v. Estelle, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 3394 n.4 (1983) (quoting *Gordon v. Willis*, 516 F. Supp. 911, 913 (N.D. Ga. 1980))(emphasis added and internal citation and quotation marks omitted). As the Supreme Court more recently stated, “[w]here a district court has rejected the constitutional claim on the merits, the showing required to satisfy 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000).

This Court continues to believe that Petitioner is neither entitled to interest on the returned assessment nor relief under § 2255 for the reasons set forth in its previous decisions. The Court further believes that this conclusion is not “debatable among jurists of reason.”

Accordingly,

IT IS ORDERED, that the Court **DENIES** Petitioner a Certificate of Appealability.

Dated: July 10, 2013

s/PATRICK J. DUGGAN

UNITED STATES DISTRICT JUDGE

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